

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Part 13 of the)
Rules to Privatize the)
Administration of Examinations for)
Commercial Radio Operator Licenses)
and to Clarify Certain Rules)

FO Docket No. 92-206

To: The Commission

COMMENTS
OF
THE NATIONAL ASSOCIATION OF
BUSINESS AND EDUCATIONAL RADIO, INC.

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SUMMARY

NABER supports the Commission's initiative to privatize the administration of the Commission's commercial radio operator examinations. The public interest will be served by adoption of this proposal by providing more frequent examinations and more convenient testing sites.

In keeping with the Commission's intent in this rule making proceeding, NABER urges the Commission to recognize multiple sources for these examinations, but limit the number of entities recognized. NABER recommends the Commission establish, among others, the following selection criteria: (1) The entities selected should have communications experience as well as experience in developing and/or administering tests; and (2) An organization seeking recognition as a testing entity must have the ability to provide test administration nationwide.

NABER discourages the Commission from mandating a set examination fee schedule to be followed by the selected testing entities. Further, NABER suggests the Commission participate in the development of the questions to be utilized by the recognized testing entities. Finally, NABER recommends that the Commission retain oversight over the fees charged for the examinations as well as require a "speed of service" by each testing entity to score, evaluate and notify the applicant and the Commission of the results of the examination.

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BUSINESS AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), through counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, hereby respectfully submits its Comments in response to the Notice of Proposed Rule Making ("NPRM") issued by the Commission in the above-referenced proceeding.

I. BACKGROUND

NABER is a national, non-profit, trade association headquartered in Alexandria, Virginia, that represents the interests of manufacturers, vendors and service providers as well as large and small businesses that use land mobile radio communications as an important adjunct to the operation of their businesses and that hold thousands of licenses in the private land mobile radio services. NABER

has five membership sections representing Users, Private Carrier Paging licensees, Radio Dealers, Technicians, and Specialized Mobile Radio operators. NABER comprises over 6,000 of these businesses and service providers holding thousands of licenses in the private land mobile services.

In the past decade, the Commission eliminated several of its licenses and licensing requirements. In Docket No. 20817, the Commission eliminated the First Class Radio telephone Operator's License. The Commission also eliminated the radio operator licensing requirements for most stations licensed under Parts 21, 22, 78, 90, 94, and many Subparts of 74. The Commission also eliminated the Operator's License necessary for domestic VHF stations in the Aviation and Maritime Services. In sum, the Commission effectively eliminated the need for licensed radio operators in every radio service except for maritime, aeronautical and international common carrier.

Nevertheless, the Commission currently issues seven types of Commercial Radio Operator Licenses and two types of endorsements. Examinations are required for six of the licenses and one of the endorsements. In consideration of its limited staff and budget, in 1986, the Commission sought comments as to whether the public interest would be served by permitting a private organization to draft and administer

all Commission commercial radio operator examinations.¹

Overall, the comments filed in response to this Notice of Inquiry encouraged the Commission to privatize the administration of these examinations. Accordingly, the Commission sought and obtained statutory authority to enable it to delegate the testing of the commercial radio operator examination to private entities.²

In this NPRM, the Commission proposes to permit private organizations to administer the Commission commercial radio operator examinations. The Commission, however, will retain its licensing authority which cannot be delegated. The Commission requests comments on the (1) the selection criteria for an testing entity or entities, (2) the regulatory or operating constraints to be placed on the testing entity or entities, (3) the level of control or supervision that the Commission should exercise over the selected entity or entities, (4) the fees that the entity or entities should be permitted to charge applicants, and (5) the capability of the private entity or entities to design and administer examinations for all classes of radio operator licenses. Finally, the Commission asked entities interested in becoming examiners to provide estimates of

¹ Notice of Inquiry, Docket 86-397 (September 24, 1986), 51 Fed. Reg. 36415.

² Federal Communications Commission Authorization Act of 1990, Pub. L. 101-396, 104 Stat 848 (September 28, 1990), 47 U.S.C. § 154(f)(5).

anticipated or projected expenses and costs for administering such examinations.

II. COMMENTS

NABER supports the Commission's proposal to privatize the administration of the commercial radio operator examinations. With the increased demand on the Commission's resources without a corresponding increase in the Commission's budget, the Commission's delegation of certain administrative duties is necessary to protect the public interest. The Commission's proposal to permit private entities to administer the examinations will permit the tests to be provided more frequently at more sites and maintain or improve the standard of quality for commercial radio operators.

A. Criteria for Selection

In the Notice of Inquiry adopted in 1986, the Commission sought comment on whether the public interest would be served by selecting only one entity to administer the Commission commercial radio operator examinations. The comments to this proposal were overwhelmingly negative. As NABER and others noted, the Commission should recognize multiple sources for the administration of the examinations. Providing an applicant with a choice of multiple sources to obtain an examination will provide greater access by the public to testing facilities and permit organizations to focus on examinations for licenses which accurately reflect

the current technology in the communication industries. Furthermore, multiple sources will ensure that fees, frequency of examinations, and the standards for successful completion of the examinations are competitive and meet the needs of the public.

NABER recommends, however, that the Commission limit the number of entities recognized to administer the exams. The Commission must recognize that developing the procedure and test criteria results in a significant investment of resources. To encourage organizations to risk these capital expenditures, an organization must be assured that it has a reasonable expectation of return on its investment. Additionally, an indefinite number of entities administering the examinations may be difficult for the Commission to oversee and to ensure a continued high standard of testing be met. Therefore, the Commission must carefully balance the need for competition with the need to encourage the development of a quality testing operation. NABER suggests that no more than five entities be recognized.

The Commission should select recognized representative organizations in a manner similar to that currently utilized for technician certification. In this regard, the

Commission should follow the general mandates of 47 U.S.C.

§ 154(f)(4)(E), which states:

The Commission shall have the authority to endorse certification of individuals to perform transmitter installation, operation, maintenance and repair duties in the Private Land Mobile Services and Fixed Services (as defined by the Commission by rule) if such certification programs are conducted by organizations or committees which are representative of the users in those services and which consist of individuals who are not officers or employees of the federal government.

Further, NABER recommends that in addition to an organization having involvement in the communications industry, the organization also have some type of experience in developing and/or testing. An organization that wishes to be certified by the Commission must be required to demonstrate its plan to develop content-valid examinations for the particular class of commercial radio operator license. The Commission should also require that any entity selected to administer these examinations must implement its testing program within three months of certification. Failure to implement the testing program would result in decertification of the entity by the Commission.

Finally, NABER urges the Commission to require that an organization seeking certification demonstrate the capability to provide examinations on a nationwide-basis. One goal of the Commission's privatization of the examinations is to reduce the burden to the applicant in having to travel great distances to sit for the examinations. An entity wishing to administer the

examinations therefore must be able to provide a greater number of sites than currently provided by the Commission's existing procedure. NABER, for the purposes of this criteria, suggests the Commission define "nationwide-basis" as the ability to provide examinations in at least 50 cities.

B. Regulatory and Operating Constraints

The Commission must adopt regulations that relate to the oversight of recognized testing organizations and the interplay between the Commission and the certified organizations to complete the licensing of a successful test candidate. The Commission must address how often tests may be administered, the time in which an organization has to evaluate and score an examination and advise the candidate of the results, and the method by which the Commission is notified of the results of an examination.

Currently, the Commission offers the commercial operator examinations only twice a year. This infrequent availability of examinations imperils an individual's ability to obtain employment when the job requires the individual to hold a Commission license with an examination requirement. NABER recommends that a Commission recognized testing entity should be encouraged to offer examinations more frequently. NABER believes, that to prevent the quality and standard of the examination from deteriorating,

the examinations should be offered at least on an every other month basis.

The rules, however, should be structured to permit an examination to be given on an extraordinary basis when circumstances require. For example, should a licensed commercial radio operator fail to renew his/her license and need to immediately reapply to retain his/her position, the Commission recognized testing entity should be permitted to provide the examination, and, as discussed below, be permitted to charge a fee for this expedited service.

Further, the Commission should set a "speed of service" goal for the scoring and notification of the test results to the candidate. NABER suggests that a testing entity be required to score, evaluate, and notify a candidate of the test results within 15 working days from the date of the examination. Further, the testing entity should be required to forward the application for the commercial operator license and the examination result to the Commission within 21 working days from the date of the examination.³

Finally, the Commission should adopt a "speed of service" period in which a commercial radio operator license will be issued after receipt of the application and examination information from the testing entity. In many situations, the issuance of the license is required prior to

³ The application and examination information should be electronically filed with the Commission to provide increase efficiency in the licensing process.

the applicant being employed. It is therefore incumbent upon the Commission to process these applications in an expeditious manner and provide the applicant the ability to give an employer an assurance that the applicant will be licensed within a definite time period.

C. Fee Regulation

NABER urges the Commission to refrain from adopting a mandated fee schedule for administration of the examinations. With multiple recognized testing entities, the Commission should permit the marketplace to set the fees for the various tests administered. The Commission, however, should maintain an oversight function over the testing entities in regard to the fees charged.

A testing entity must be permitted a flexibility to allow for differences in the cost of administering the commercial radio operator examinations. The costs associated with administration of a test may fluctuate depending on various factors, such as the availability of test sites, the number of times a test is administered, the investment made in developing the test, the cost of advertising and promotion, and such similar capital and operating expenses. Further, should a candidate need a faster speed of service than that required, the testing entity should be permitted to charge for the expedited service. Accordingly, NABER recommends that the Commission not set an examination fee schedule.

D. Capability to Design and Administer Examinations

The Commission seems to propose that each Commission recognized testing entity would be permitted or required to develop an examination for each class of commercial radio operator. NABER is concerned that allowing each entity to develop its own examination, without Commission participation, could result in a reduction in the standards required to obtain a commercial radio operator license.

NABER therefore recommends that the Commission require each selected testing entity to submit a copy of the examination developed for each class of commercial radio operator license to the Commission for approval prior to the test(s) being administered. Each entity should be prepared to demonstrate to the Commission, upon request, the methods by which the test was developed and evidence that the examination is content valid and psychometrically sound.

The examinations required to be submitted to the Commission for approval must be classified as confidential information, and not be available for inspection by or provided to any other testing entity. The development of content-valid, psychometrically sound examinations requires a significant investment in time and capital. An entity that makes this substantial investment should not be penalized by making its efforts available, without charge, to its competitors.

Alternatively, NABER suggests that the better method of examination development would require the Commission to be responsible for developing a pool of questions that must be utilized by the various recognized testing entities. The recognized testing entities will then be required to randomly select these questions to develop the tests administered, and then score, evaluate, and report the results of the tests. The Commission must also be responsible for updating the questions on a reasonably frequent basis to ensure the tests continue to be valid for the skills being tested.⁴

Under this method, each recognized testing entity will be authorized access to the Commission's data base of question. Each entity will be required to use the same process for random selection to ensure the validity of the tests administered and a minimum standard for testing. Further, each testing entity must be able to provide statistical analysis to the Commission, upon its request, to evidence that a content valid and psychometrically sound examination is being provided. Finally, each entity must

⁴ This method is currently used by the Federal Aviation Administration ("FAA"). Like the Commission, the FAA is authorized to designate private persons or entities to examine, inspect, and test persons and aircraft for the purpose of issuing airman and aircraft certification. Private persons may be designated by the administrator to administer both written and flight tests for applicants seeking certification or licensing as a pilot. The FAA has developed a data base of 5,000 questions that are published for public study. The tests for an applicant are developed by the testing entity randomly selecting a number of the questions from the FAA's data base.

also demonstrate, upon request by the Commission, that the tests were properly administered with a minimum degree of security and monitoring to ensure that the integrity of the test was not violated and that cheating did not occur.

NABER recognizes that the Commission may not be inclined, nor have the resources available, to undertake or participate in the establishment and update of this type of data base. Consequently, the task of developing the commercial radio operator examinations may fall on the various testing entities. In this event, NABER recommends that the Commission require submission of the examinations by each testing entity for approval and adopt a rule that protects the proprietary rights of the entity developing the examinations. At a minimum, should the Commission decline to approve the developed examinations, NABER urges the Commission to retain an oversight function over the development of the examinations to maintain the standard of quality for commercial radio operators licensed by the Commission.

E. Estimated Costs of Administration

NABER is interested in becoming a Commission recognized testing entity. However, until the Commission determines and adopts rules regarding the specific duties of a testing entity, NABER is unable to provide estimate of costs or anticipated expenses.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

NATIONAL ASSOCIATION FOR
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